

1 JACOB D. BUNDICK, ESQ.
Nevada Bar No. 9772
2 NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
3 AKERMAN SENTERFITT LLP
1160 Town Center Drive, Suite 330
4 Las Vegas, Nevada 89144
Telephone: (702) 634-5000
5 Facsimile: (702) 380-8572
Email: jacob.bundick@akerman.com
6 Email: natalie.winslow@akerman.com

7 *Attorneys for Defendants ReconTrust*
8 *Company, N.A., and Bank of America, N.A.,*
9 *successor by merger to BAC Home Loans*
Servicing, LP

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 ANDREW L. JORDAN,

13 Plaintiffs,

14 vs.

15 PLAZA HOME MORTGAGE, INC., FIRST
16 AMERICAN TITLE INSURANCE COMPANY;
RECONTRUST COMPANY, N.A.; BAC
17 HOME LOANS SERVICING LP;
CHARLOTTE OLMOS; and DOES 1-25
18 CORPORATIONS; DOES and ROES 1-25
Individuals, Partnerships, or anyone claiming any
19 interest to the property described in the action,

20 Defendants.

Case No.: 3:11-cv-348-RCJ-RAM
ORDER

MOTION FOR LEAVE TO FILE UNDER
SEAL

21 Defendants ReconTrust Company, N.A. (ReconTrust), and Bank of America, N.A.
22 (BANA), successor by merger to BAC Home Loans Servicing, LP (BAC) move for leave to file
23 under seal pursuant to Local Rule 10-5(b) an internal proprietary document which they intend to
24 produce as evidence in support of their Motion for Summary Judgment.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **INTRODUCTION**

4 This Court previously denied defendants' Motion for Summary Judgment [Dkt. 58], finding
5 that defendants had not provided sufficient evidence that First American Title Insurance Company
6 (**First American Title**), the entity that executed the Notice of Default as agent for ReconTrust, had
7 authority to execute the Notice of Default. [*Id.*] Defendants have in their possession the evidence
8 requested by the Court. There is a reasonable basis for departing from the general policy of a public
9 filing, and good cause exists to grant this Motion to File Under Seal, because the subject evidence, a
10 Statement of Work (SOW), is proprietary to BANA and evidences a confidential delineation of
11 services provided by First American Title to BANA.

12 **II**

13 **LEGAL ARGUMENT**

14 Local Rule 10-5(b) provides, in pertinent part, that "papers filed with the Court under seal
15 shall be accompanied by a motion for leave to file those documents under seal, and shall be filed in
16 accordance with the Court's electronic filing procedures." The Ninth Circuit has determined that, in
17 the event a party requests to file documents under seal, the Court should balance the compelling
18 reasons for sealing the subject documents with the public interest favoring disclosure. *Pintos v.*
19 *Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010). "In general, 'compelling reasons'
20 sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when
21 such 'court files might have become a vehicle for improper purposes,' such as the use of records to
22 gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets."
23 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Nixon v.*
24 *Warner Commc'ns, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306, 1306 (1978)). Moreover, the public
25 interest in full disclosure of documents is limited to ensuring the "public's understanding of the
26 judicial process and of significant public events." *Id.* (quoting *Valley Broadcasting Co. v. U.S. Dist.*
27 *Ct.*, 798 F.2d 1289, 1295 (9th Cir. 1986)).

28 Here, there are compelling reasons to seal the SOW because the document contains

1 confidential terms entered into by BANA and First American Title. Specifically, the SOW is an
2 agreement between two commercial entities that represents BANA's business model for the non-
3 judicial foreclosure of real properties in Nevada. These business methods contain detailed provisions
4 related to the proprietary nature of information and documents furnished for the purpose of
5 performing under the agreement. The SOW contains a list of services provided by First American
6 Title to BANA; specific instructions regarding invoicing; a service fees schedule; and performance
7 methods. The general public interest is not served in any way by the disclosure of said proprietary
8 information because it does not promote the public's understanding of the judicial process and of
9 significant public events. *See Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th
10 Cir. 2006). Therefore the sensitive nature of the SOW outweighs the public's interest in disclosure.

11 Accordingly, there are compelling reasons to justify defendants' request to file the SOW,
12 which contains competitively sensitive information, under seal.

13 III

14 CONCLUSION

15 For the foregoing reasons, defendants request this Court allow them to file the SOW as an
16 exhibit to their Motion for Summary Judgment under seal.

17 ORDER

18 IT IS SO ORDERED dated this 14th day of November, 2012.

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24 ROBERT C. JONES
25 Chief Judge
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